THE LAW AND ITS IMPACT ON COMPUTING TECHNOLOGY AND BUSINESS

OPEN-SOURCE SOFTWARE SERIES

PART 1: INTRODUCTION

Open-source software stands out as a significant advancement in software development over the past few decades. Recently, a growing number of companies are embracing innovative approaches rooted in open-source technology. With millions of repositories on platforms like GitHub, (an internet hosting service for software development) both in-house teams and external developers harness community-sourced code from public repositories to efficiently build, test, and maintain software.

While open-source software (OSS) offers numerous benefits to innovation, it also presents a substantial threat to intellectual property. For licensees, license requirements may limit commercial and proprietary use. For developers, safeguarding their intellectual property becomes complex when they are but one of hundreds, even thousands of contributors in a large OSS project.

In this series, we try to address some of these challenges. Part 1 of this series will begin by first

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defining what the "source" in opensource is, followed by an explanation of what opensource software or code is. Next, we will look at the types of opensource licenses and their reach on intellectual property.

Part 2 will discuss Copyleft licenses in depth, giving examples of strong and weak copyleft licenses. In Part 3, we will discuss Distribution and what it entails in terms of Botswana copyright law. The subsequent parts will deal with the legal benefits and risks associated with OSS, the intersection between OSS and copyright, trademark and patent law, giving examples of decided and ongoing cases. The series will conclude with an outline of some OSS best practices for both businesses and investors.

What is Source Code?

Source code refers to the form in which programmers write software. When we click on an icon on our desktops or cellphones, the program is in an executable format, but it was initially written in source code. Programmers use a development tool called a compiler to translate source code into machine-readable binary code, enabling software to work efficiently on our devices.

Proprietary software, such as Microsoft Word and Adobe Acrobat, is available only in its executable form. Vendors of proprietary software typically withhold access to their source code, which can be inconvenient for users when issues arise. In critical scenarios, like medical devices or rocket ships, where vendor support might be unavailable (for example if the vendor went out of business or refuses to fix the code), this lack of access to source code could pose serious risks.

To address these challenges, the open-source movement emerged. Its primary goal is to ensure that essential software, which affects our daily lives, remains accessible and modifiable by all. Open-source software is distributed with its source code, allowing anyone to examine, modify, and share it freely.

What is Open-Source Software?

Open-Source Software (OSS) is a form of publicly accessible software

source code which is subject to certain license conditions that allow users or licensees to use, modify, view, and distribute the code to anyone and for any purpose, often for free.

A free license which restricts use, e.g., by prohibiting commercial use is not open source. All opensource licenses are unrestricted, they grant all the rights under Copyright law. This is one of the requirements of the opensource definition. However, they impose certain conditions on the exercise of the right. More on this shall be discussed hereunder.

Types of Open-Source Licenses

There are two main families of open-source licenses; Permissive and Copyleft which is sometimes referred to as restrictive or viral. Within the copyleft family, we have strong and weak copyleft licenses. The strength of a copyleft license is determined by the extent to which the provisions of the license can be imposed on derivative works.

Permissive OSS Licenses

General Rule: if you distribute, provide notice.

Permissive Open-Source Software Licenses do not affect or have very little effect on the intellectual property rights of the user. They are easy to comply with, subject to one general rule; if you distribute the software, include a copy of the license. A copy of the license informs recipients that they are receiving code under this license, but it does not limit how the user can license a product that contains this software, hence the term, permissive.

Permissive licenses allow distribution generally by requiring that the user produce a copyright or warranty notice. The user is also permitted to amend, adapt, and combine the opensource code with proprietary code to create derivative works.

Given the non-burdensome nature of this type of license, there is little to no legal review necessary before using or incorporating OSS under a permissive license into proprietary works, save for ensuring that the requisite notice, warranty, or attribution is provided.

If you have interest in an in-depth legal advice, please feel free to contact us at info@gobhozalegalpractice.co.bw Tel: 3116371

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